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No. 78-1604

In the Supreme Court of the United States

OCTOBER TERM, 1978

CENTRAL MACHINERY COMPANY, APPELLANT

v.

ARIZONA STATE TAX COMMISSION

ON APPEAL FROM THE SUPREME COURT OF ARIZONA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.
Solicitor General
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Washington, D.C. 20530

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MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is filed in response to the Court's invitation dated June 11, 1979.

In the present case, an agricultural equipment dealer challenged the validity of Arizona's "transaction privilege tax" as applied to a sale of farm machinery to the Gila River Indian Community, for use on the Tribe's Reservation. Reversing the State Superior Court, the Arizona Supreme Court, by a divided vote, rejected the claim. The dealer has appealed here and the jurisdiction of this Court seems clear under 28 U.S.C. 1257(2). See *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164 (1973); *Warren Trading Post* v. *Arizona Tax Comm'n*, 380 U.S. 685, 686 (1965).

In our view, the federal question presented is substantial. Directly at issue is whether this Court's decision in

Warren Trading Post, *supra*, was correctly distinguished on the ground that the present dealer is not licensed as a permanent "Indian trader" and does not reside on the Reservation. In another aspect, the case presents the recurring question whether transactions between Indians and non-Indians within a Reservation may be taxed by the State so long as the legal incidence of the tax falls on the non-Indian, notwithstanding the economic consequence may be to frustrate, or substantially to diminish the prospect of achieving, the goal of tribal self-sufficiency. Here, that issue has special significance because the tax imposed relates to the purchase of farm machinery which is today essential to the development of the Reservation in accordance with the original intent to make farmers of the Indians, sustaining themselves by the cultivation of the lands set aside for their use.

We note, finally, that the present case, together with others presently scheduled for argument[1] or pending on petitions for certiorari,[2] affords the Court an opportunity definitively to fix the boundary between State and tribal regulatory and taxing authority within Indian Reservations. In the circumstances, we urge the Court to note

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[1] *State of Washington* v. *Confederated Tribes of the Colville Reservation, et al.*, No. 78-630.

[2] *White Mountain Apache Tribe, et al.* v. *Blacker, et al.*, No. 78-1177; *North Carolina Wildlife Resources Commission* v. *Eastern Band of Cherokee Indians*, No. 78-1653. In both these cases, responding to the Court's invitation, we have urged that certiorari be granted.

probable jurisdiction of this appeal and, if certiorari is granted in Nos. 78-1177 and 78-1653 (note 2, *supra*), to set the several cases for argument in sequence.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

AUGUST 1979